Office of Chief Counsel Internal Revenue Service

memorandum

CC:LM:MCT:PHI:TL-N-6388-00 GDCurran

GDCurran

date: NOV - 2000

to: Frank J. Bagnato, Jr., Team Manager, Appeals

Philadelphia

Attention: Ed Sigmund, International Specialist

from: James C. Fee, Jr.

Associate Area Counsel (LMSB) Northeast Region CC:NER

subject:

and related Forms 872

DISCLOSURE STATEMENT

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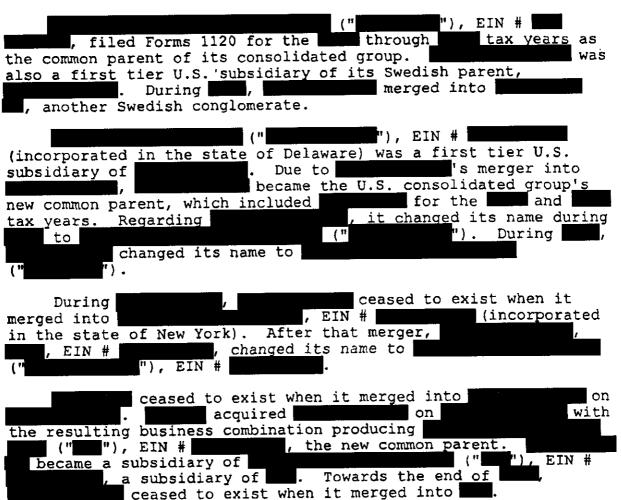
INTRODUCTION

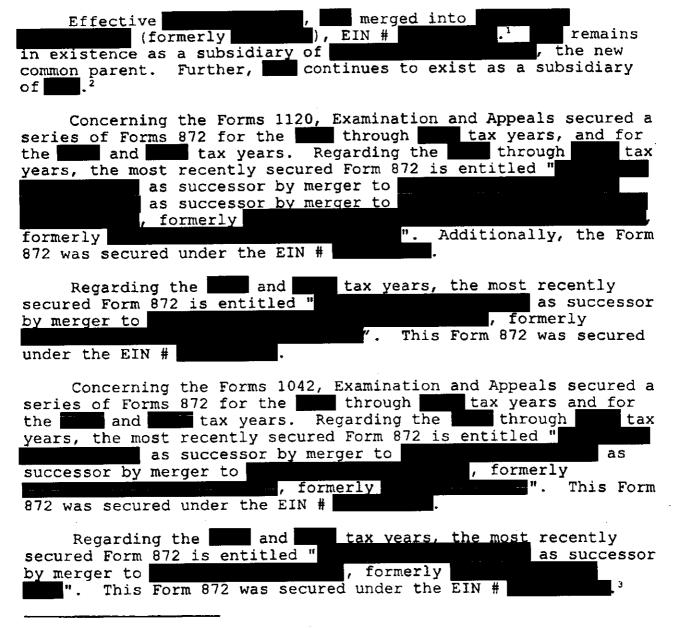
We respond to your request for advice, dated
, regarding the correct captions and language for Forms 872,
Consent To Extend The Time To Assess Tax, for tax returns
concerning the
Forms 872 exist for Forms 1120, U.S. Corporation Income Tax
Return, for the through tax years, and the and
tax years. Additionally, separate Forms 1042, Annual

Withholding Tax Return for U.S. Source Income of Foreign Persons, exist for the through tax years, and the and tax years.

Concerning the Forms 1120, a transfer pricing issue is in dispute for the through tax years. Regarding the Forms 1042, the issue involves withholding on a deemed dividend from a first tier U.S. subsidiary to its Swedish foreign parent for the through tax years. Both issues are currently under Competent Authority's jurisdiction.

<u>FACTS</u>





¹ Based upon the facts presented to us, none of the business combinations discussed above involved a liquidation, reverse acquisition or downstream merger. If any of the business combinations did involve a liquidation, reverse acquisition or downstream merger our advice does not apply.

² See attached diagrams which depicts the above-fact pattern.

³ Concerning the Forms 1042, the issue involved a deemed dividend paid by the first tier U.S. subsidiary and common parent to its Swedish parent. The deemed dividend occurred through a second tier U.S. subsidiary's transactions with its Swedish

<u>Analysis</u>

Regarding a consolidated income tax return, generally, the common parent, in its own name, is the proper party to extend the statute of limitations on behalf of itself and the consolidated group. The common parent is the highest tier domestic corporation. The common parent remains the agent for the consolidated group for the years during which it was the common parent as long as it remains in existence. When the common parent goes out of existence, the common parent can designate another member of the group as agent for the members of the group for tax years ending prior to its dissolution, or if the common parent goes out of existence without making a designation, the remaining members may designate a new agent for the members of the group. If no designation is made the Service may deal with each member of the group individually.

Due to some uncertainty concerning the common parent as an agent for the consolidated group regarding reverse acquisitions and downstream mergers, the Service issued Temp. Treas. Reg. § 1.1502-77T in 1988. Under this temporary regulation, the Service can secure statute of limitations extensions from, or issue notices of deficiency to, any one of several "alternative agents." As provided for in the temporary regulation, a successor to a former common parent that has ceased to exist can generally act as an alternative agent for the old consolidated group. However, this temporary regulation applies for tax years which the due date (without extension) of the consolidated return falls after September 7, 1988.

In our case, Temp. Treas. Reg. § 1.1502-77T does not apply to the tax year since it precedes the September 7, 1988 effective date prescribed in the temporary regulation.

Concerning the tax year, (formerly), formerly (as year remained the proper party to execute the Form 872 for the old consolidated group for that year until it ceased to exist in (as year). At that time, since Temp. Treas. Reg. S 1.1502-77T did not apply, the Service, to ensure the joint and several tax liability of (and each member of its former consolidated group, should have secured separate Forms 872 for and each member of its former consolidated group for the

parent. While the first tier U.S. subsidiary filed Forms 1042 for the through tax years, the second tier U.S. subsidiary did not file any Forms 1042 for these years.

⁴ Based upon the facts as presented, we assume no designation was made.

tax vear.	However, since	this did n	ot occur,	, the most
recently execut	ed Form 872 for	the t	ax year	remains valid in
that it binds of	nly (f	ormerly		<u>, forme</u> rly
) and its succe	ssors for		
's	consolidated ta	x liability	for the	tax year.

Concerning the through tax years, the Service properly secured Forms 872 under the alternative agent rules, therefore the most recently executed Forms 872 for the through tax years do not present an issue concerning the joint and several tax liability for the common parent and its consolidated group for each of those years.

Regarding the Forms 1042, the consolidated return rules do not apply to the requirement to report the income tax withheld on foreign persons under I.R.C. §§ 1441 and 1442, as reported on Form 1042. Since the first tier U.S. subsidiary for the through tax years did file Forms 872 and was the entity responsible for paying any dividend to the foreign parent, the Service secured Forms 872 in the name of the first tier U.S. subsidiary and its successors for each of the through tax years.

Conclusion

Concerning the Forms 872 for any Federal income tax liability due from the Forms 1120, we recommend the following:

	Prepar	ce a	sepa	arate	Form	872	for	the		tax	year	entitle	ed_
11	_						SSOI	py 1	nerge	: to			,
	as suc	ces	sor 1	by me	rger	to					, and a	forme	rly
	-										• * " •		
Addi	tional	У,	at th	he bo	ottom	of t	he f	irst	page	of	the Fo	rm 872	add
the	follow:	ing	langi	uage:	11 #						¹s,	EIN #	
	, se	er.	al t	ax li	abili	ty 1	or						
cons	olidate	ed g	roup	for	the t	ax y	/ear	ende	1	. 11			

⁵ For each of the through tax years, the second tier U.S. subsidiary engaging in the transaction with the foreign parent did not file Forms 1042. Therefore, if the second tier U.S. subsidiary is deemed the proper party to file a Form 1042 no statute of limitations issue exists since no returns were ever filed.

, formerly

Form 872 add the following language: "*

Prepare a Form 872 for the through as years, inclusive, entitled as successor by merger to as successor by merger to formerly , and as an alternative agent to the consolidated group under Temp.
Treas. Reg. § 1.1502-77T*". Additionally, at the bottom of the first page of the Form 872, add the following language: "*Concerning the tax liability of
Prepare a Form 872 for the and tax years, inclusive, entitled " as successor by merger to , formerly (EIN #), as successor by merger to , and as an alternative agent to consolidated group under Temp. Treas. Reg. § 1.1502-77*". Additionally, at the bottom of the first page of the Form 872, add the following language: "*Concerning the tax liability of EIN # , consolidated group, for the tax years ended and , inclusive."
Also, use 's EIN # rather than 's EIN # of for the and tax years, use 's EIN # of rather than 's EIN # of rathe
Concerning the Forms 872 for the Federal withholding tax due on the Forms 1042, we recommend the following: Prepare a Form 872 for the through tax years
entitled " as successor by merger to as successor by merger to

foreign persons for the tax years ended , and , inclusive."

Prepare a Form 872 for the and tax years entitled as successor by merger to (EIN #) as successor by merger to Additionally, at the bottom of the first page of the Form 872 additionally.

*". Additionally, at the bottom of the first page of the

's, EIN # withholding for U.S. source income of

, formerly

the following language: "*

Withholding for U.S. source income of foreign
persons for the tax years ended and and, inclusive."

For the through tax years, use

's EIN # rather than selection is EIN # of

The selection is EIN # of

's EIN # rather than selection is EIN # of

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Also, we recommend that for both Forms 872 you identify the type of tax as "Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons".

Finally, the taxpayer's letter, dated identifies 's, Corporate Vice President-Taxes as the authorized party to sign for for all the Forms 872.

Our advice is subject to the Office of Chief Counsel's ten day post-review procedures. If the Office of Chief Counsel alters or revises our advice they will contact us within ten working days from their receipt of our advice. We recommend that before issuing the Forms 872 to the taxpayer, you wait until the ten day period expires and we confirm that no alterations or revisions were made to our proposed advice. Please contact attorney George Curran if you have any additional questions regarding this memorandum.

JAMES C. FEE, JR. Associate Area Counsel (LMSB)

Enclosure: as stated.